

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION No. 14-2033-BLS2

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

PARTNERS HEALTHCARE SYSTEM, INC.,
SOUTH SHORE HEALTH AND EDUCATIONAL
CORP., and HALLMARK HEALTH CORP.,

Defendants.

JOINT MOTION FOR ENTRY OF AMENDED FINAL JUDGMENT BY CONSENT

As contemplated in the proposed Consent Judgment filed on June 24, 2014, the Commonwealth, Partners HealthCare System, Inc. (“Partners”) and Hallmark Health Corp. (“Hallmark”) have engaged in further negotiations following the Health Policy Commission’s (“HPC”) issuance of its Review of Partners HealthCare System’s Proposed Acquisition of Hallmark Health Corp., Final Report (“Hallmark Final Report”). Having now negotiated four amendments to the settlement, all parties jointly request that the Court: (i) replace the original Consent Judgment with the attached Amended Consent Judgment and (ii) enter the Amended Consent Judgment, attached hereto as Exhibit A, to resolve this enforcement action. In support of this Motion, the parties state:

1. On June 24, 2014, the Commonwealth filed its complaint in this action, together with a proposed Consent Judgment that would resolve the Commonwealth’s claims concerning

Partners' (i) acquisition of South Shore Health and Education Corp.; (ii) acquisition of Hallmark Health Corp., and (iii) contracting practices with unowned affiliates physician groups that are not also closely affiliated with a Partners hospital, all of which have been the subject of extensive antitrust investigation by the Commonwealth through the Office of the Attorney General.

2. Among the provisions of that proposed Consent Judgment, Paragraph 77 provides:

In the event the HPC issues a Cost and Market Impact Review Final Report that finds a likelihood of materially increased prices as a result of Partners' acquisition of [Hallmark], the Attorney General and Partners shall meet and confer, pursuant to the procedures of Section X.C. of this Consent Judgment, concerning HPC findings and whether the Attorney General and Partners can agree on mitigation of any material price impacts identified by the HPC in such Final Report.

Proposed Consent Judgment, ¶ 77.

3. When the parties submitted the proposed Consent Judgment, the HPC had not yet completed its market impact review or issued any report concerning Partners' Hallmark acquisition. On July 2, 2014, the HPC released its Review of Partners HealthCare System's Proposed Acquisition of Hallmark Health Corporation, Preliminary Report ("Hallmark Preliminary Report"). In light of that preliminary report and the likelihood that the Commonwealth would seek to re-engage Partners following the final Hallmark report, the Commonwealth moved to extend the schedule for consideration of the Consent Judgment. The Court granted that request and extended both the comment period and the next-scheduled court date to September 15 and 29, respectively.

4. Following the HPC's Hallmark Preliminary Report, Partners submitted its response on August 1, 2014 pursuant to G.L. c. 6D, § 13. The HPC then issued its Hallmark Final Report on September 3, 2014 ("HPC Final Hallmark Report"). That report is before the Court as part of the public comments as a supplement to the HPC's comment. Broadly speaking,

HPC raised concerns about increased costs arising out of the Hallmark transaction, though Partners disputes the HPC's conclusions.

5. The Commonwealth advised Partners that the HPC's Hallmark Final Report triggered the parties' re-engagement under Paragraph 77 of the Consent Judgment. Partners agreed to so re-engage concerning the HPC's report. Consent Judgment, ¶ 77.

6. Following renewed negotiations, the parties have agreed upon four substantive amendments to the original proposed Consent Judgment. These four amendments are set forth in Exhibit B to this Motion, which contains the amended text as compared to the original Consent Judgment terms.¹ Each amendment is responsive to issues raised in the HPC Final Hallmark Report, and described briefly here:

- The first amendment applies the price growth restriction—limiting any Partners' price increase to the lower of general inflation or medical inflation—to the Hallmark entities independently. *See* Exhibit B, ¶ 77A. The original Consent Judgment restricted Hallmark's prices only under the same cap as the Community Contracting Component providers. Among the HPC's concerns, HPC predicted price increases attributable to the Hallmark acquisition that it predicted would not be mitigated by the community network price cap. *See* Hallmark Final Report, at Exhibit B, 2-4. HPC also suggested that this particular concern would be very largely solved by applying the price restriction to Hallmark independently. *Id.* at 52 n.196 & 53 n.199. The Commonwealth agreed with that assessment and the amended Consent Judgment now reflects that improvement.

¹ The Parties also made certain non-substantive changes to reflect the fact that the document has been amended. The pages reflecting these changes are also included in Exhibit B.

- The second amendment preserves the current level of psychiatric/behavioral health services at Partners' Hallmark and North Shore facilities for five years. *See* Exhibit B, ¶ 77B. Partners has explained to the HPC and the public that, if it acquires Hallmark, it intends to reorganize the provision of psychiatric/behavioral health services that it provides at Partners facilities north of Boston with a focus on a new Center of Excellence in Psychiatry and Behavioral Health at Union Hospital. The HPC in its Hallmark Final Report acknowledged that such a reorganization *could* provide benefits for patients with respect to access and quality of psychiatric services but also expressed concern that Partners' descriptions of its plans lacked a firm commitment to preserve psychiatric/behavioral health services and access thereto. Hallmark Final Report, 72-73. The Commonwealth sought and obtained from Partners this broad promise that, for five years, the overall level of these services at Partners' Hallmark and North Shore facilities will be preserved during any reorganization of services.
- The third amendment expands Paragraph 69 of the Consent Judgment to reflect the expected role of Partners' information technology systems in addressing the *potential* impact on patients from implementing the component contracting remedy. *See* Exhibit B, ¶ 69. Paragraph 69 acknowledges that, if insurers implement component contracting to create limited network insurance products, there is a *potential* risk that patients could be referred to a doctor or facility that is out-of-network for a particular patient. *See* Hallmark Final Report, Exhibit B, 6. The parties agree in Paragraph 69 to consult concerning these out-of-network referral issues as component contracting is implemented. The amendment

provides that as Partners implements new IT systems, it will develop policies designed to address these same potential referral issues.

- The fourth amendment requires the Compliance Monitor to include information in its annual report on the number and scope of the Partners' Risk Arrangements that are subject to the TME Growth Cap. *See* Hallmark Final Report, 3. The TME Growth Cap applies to a segment of Partners' commercial business – risk contracts – that is expected to grow. The inserted amendment directs the Compliance Monitor to review Partners' risk business and report on its growth through the life of the TME Growth Cap. The amendment will provide increased transparency concerning the segment of Partners' business measurable under this provision. *See* Exhibit B, ¶ 118.

7. The parties have amended the Consent Judgment to reflect these four changes. *See* Exhibit A. The Court now has before it a complete settlement, no longer subject to the possibility of further negotiations in response to reports by the HPC or other agencies. *See* Exhibit A, ¶ 77. The parties request that the Court enter the Amended Consent Judgment to resolve this litigation.

8. The Commonwealth has conferred with counsel for all defendants—Partners, Hallmark and SSHEC—and each has indicated that they join this motion.

WHEREFORE, for the reasons set forth above, all parties now jointly request that the Court: (i) replace the original Consent Judgment with the attached Amended Consent Judgment and (ii) enter the Amended Consent Judgment to resolve this enforcement action.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Matthew M. Lyons, hereby certify that on September 25, 2014 I served true copies of the foregoing *Joint Motion for Entry of Amended Final Judgment by Consent* by sending a copy thereof by electronic and U.S. mail, to:

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